

GENERAL SERVICES ADMINISTRATION
Washington, DC 20405

May 8, 1992

FIRMR BULLETIN C-32

TO: Heads of Federal agencies

SUBJECT: Vendor provided Federal information processing (FIP)
training

1. Purpose. This bulletin provides guidance to assist agencies in determining which FIP resources training is acceptable for attendance by Federal Government employees.

2. Expiration Date. This bulletin contains information of a continuing nature and will remain in effect until canceled or superseded.

3. Contents. This bulletin addresses the following topics:

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4. Related material.

5 U.S.C. 4101
5 U.S.C. 4111
5 U.S.C. 7353
18 U.S.C. 201(c)
26 U.S.C. 501(c)(3)
31 U.S.C. 1353
41 U.S.C. 423
5 CFR 735 and 2635
Executive Order 12674
FAR Part 3
Federal Personnel Manual Chapter 410, Subchapter 5
41 CFR Part 301-1 and Chapter 304

TC 90-4

FEDERAL INFORMATION RESOURCES MANAGEMENT REGULATION
APPENDIX B

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5. Information and assistance. Additional guidance on information in this bulletin may be obtained from:

General Services Administration
Regulations Analysis Division (KMR)
18th and F Streets, NW.
Washington, DC 20405
Telephone: FTS or (202) 501-3194 (v), or
FTS or (202) 501-0657 (tdd)

6. Acronyms.

CFR Code of Federal Regulations
DOD Department of Defense
FAR Federal Acquisition Regulation
FIP Federal Information Processing
FTR Federal Travel Regulation
IRM Information Resources Management
NIST National Institute of Standards and Technology
OGE Office of Government Ethics
OPM Office of Personnel Management
OMB Office of Management and Budget
U.S.C. United States Code

7. Background.

a. A free flow of information and ideas between the vendor community and the Federal Government is a vital part of the procurement process. Vendor provided training is one of the more common methods of fostering such information exchange. Vendor provided FIP resources training can assist the Government in making more informed buying decisions. Some vendor training, however, can seriously impact the competitive procurement process. For example, vendors may obtain an unfair "competitive edge" by sponsoring training which promotes their products or services. Vendors who offer assistance with the development of "real case" agency acquisition documents in their training may obtain unfair knowledge of, or undue influence over, agency acquisitions. Vendor training that is "by invitation only" may appear to be an attempt to unduly influence agency officials. These situations make it imperative that agency supervisors carefully select the training their employees attend.

b. OPM, which has overall responsibility for the management of Federal training, publishes general training guidelines in the Federal Personnel Manual. A number of statutes and regulations, as well as an Executive Order, govern ethics and integrity issues

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affecting training. Included among these are OGE standards of conduct prescribed in 5 CFR 735. OGE has primary responsibility for establishing principles of ethical conduct for executive branch employees. Agency regulations or standards of conduct may contain additional guidelines regarding the acceptance of gifts or training for employees. Some agencies may have agency gift acceptance statutes that will permit them to accept free training without improperly augmenting their appropriations for training. Agency managers and supervisors must be fully conversant with the various regulations affecting this issue, especially agency regulations and/or exceptions, to better select training for their employees.

8. Types of FIP training. This bulletin addresses the following types of vendor provided FIP training.

a. "Technical training" is product-specific training designed to familiarize users at all levels with the operation and maintenance of FIP resources. Because of the proprietary nature of some of this training, it can only be obtained from the supplier of the resource, and is usually furnished under contract to the Government.

b. "Executive seminars" are presentations primarily for high level management decision makers. They are designed to provide executives with a better understanding of the value FIP resources can provide to business and mission operations.

c. "Product presentations" are product-specific presentations by industry to announce, explain, or demonstrate the operation, application, or use of their equipment or software.

d. "Procurement seminars" provide information on Federal procurement regulations and general material on how to conduct a procurement. They may be either courses or single topic presentations that discuss the preparation of specifications, evaluation factors or other related procurement topics.

9. General considerations regarding vendor provided training. Agencies should follow the guidance below before approving attendance at vendor provided FIP training unless the training is technical training that is either secured under a Government contract or provided by the contractor to facilitate use of products it furnishes under a Government contract. Technical training of this type is acceptable for Federal employees and may be utilized in accordance with the terms of the contract.

a. Federal sources are the preferred training alternative for Federal employees. The Federal Personnel Manual, subchapter 5 of Chapter 410, requires that the following criteria be met before non-Federal training sources may be used: Existing agency programs will not adequately meet the need and new programs cannot be developed in the timeframe required to meet the training need, and no other suitable Federal source has been found; or Federal training, including any attendant costs, must be more expensive than non-Federal training.

b. Agencies should ensure that their utilization of vendor training programs is balanced, and not biased toward one vendor or product. To this end, selection of attendees for any training course should be made by the Government, not a vendor. Training offered on an "invitation only" basis should be refused. Additionally, agencies should attempt to balance the information received about a specific product from a single equipment, software, or services vendor by gathering information from unbiased or competing sources such as those listed in paragraph 10, below. This information gathering process should include reviewing a number of products of competing vendors.

c. Procurement seminars that are totally or primarily sponsored by a single equipment, software, or services vendor, should not be attended by Federal employees. Agencies should use other training sources that can provide more complete and unbiased information. (Note: This does not refer to instances where vendors participate as part of the program at Federally sponsored procurement training.)

d. To ensure that agency executives receive necessary information regarding the potential for the application of FIP resources to business practices, it is acceptable for agency executives to attend short duration executive seminars or to arrange executive visits to vendors. The purpose of these visits may be to attend product presentations or executive briefings on new technologies. The visits may include one on one briefings on a manufacturer's product line. These executive visits or seminars should be short term in duration (e.g. one day or less excluding travel time) and initiated by the agency. Visits to competing vendors, as well as market forecasters or alternate sources referred to in paragraph 10, below, should be scheduled to ensure a balance of information is received.

e. An agency should pay any expenses involved in training, with the exception of a discount on or waiver of an attendance fee offered to the general public or to all Government employees

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(for example a "free" ticket to enter a computer show). A training request should be prepared covering applicable training fees, travel and subsistence expenses for any training received. (Note: Although there is Governmentwide authority at 31 U.S.C. 1353 for agencies to accept certain payments from non-Federal sources in connection with attendance at meetings and similar functions, the implementing regulations at 41 CFR Part 301-1 and Chapter 304 preclude use of that authority to accept vendor promotional training.)

f. Prohibitions on agency acceptance of free training from outside sources do not apply when specifically authorized by statute. However, the statutory authority at 5 U.S.C. 4111 under which executive branch employees may be able to accept expenses incident to training and attendance at meetings applies to payments from an organization exempt from taxation under 26 U.S.C. 501(c)(3) and, thus, would not permit acceptance of a gift from a commercial vendor.

g. The procurement integrity provisions at 41 U.S.C. 423 and FAR 3.104 specifically address vendor promotional training. They prohibit any executive agency employee who participates personally and substantially in a procurement (a "procurement official") from accepting a gift from a competing contractor during the conduct of a procurement. FAR 3.104.4(f)(1) defines the term "gift" to include vendor promotional training and contains exclusions that would permit acceptance of vendor promotional training only if it is offered to the general public or all Government employees, paid for by the Government, secured under Government contract, or accepted under specific statutory authority.

h. FIP "product presentations," or "product announcements," which are open to the general public and/or all Government employees, are generally acceptable for Government employees to attend. Typically of one day or less in duration, they are often used by vendors or industry groups to announce new products or present the latest technological developments. Authorization to attend these presentations on official time should be based on the following:

(1) Agency representation at the demonstration or presentation is determined to be in the Government's interest and will not result in an appearance of favoritism or lack of impartiality in the procurement of FIP products and services; and,

(2) Attendance is approved by the attendee's supervisor.

10. Alternative sources for training and information.

a. Many Government agencies have well developed training programs that can satisfy most agencies' training needs. These include GSA, OPM, DOD, and the U.S. Department of Agriculture Graduate School. Examples follow of the types of training provided by these and other organizations that can be used in lieu of vendor provided FIP training.

(1) Procurement seminars and classes are provided by GSA, OPM, DOD, other Federal agencies, and educational or other specialized non-Government sources. Specialized courses can be developed by agencies, for example, the Federal Acquisition Institute's "Acquisition of FIP Resources" course.

(2) Technology briefings that are good sources of unbiased information are offered by a number of Federal agencies, including the following:

- DOD's Information Resources Management College has developed an information technology trends course for senior executives. They also offer IRM courses for non-DOD Government employees when space permits;

- NIST and GSA offer several Governmentwide information technology forums each year;

- The Federal Executive Institute, one of OPM's training centers, sponsors an annual Executive Forum which is usually held at a hotel in the Washington, D.C. area. This conference is for Federal executives and managers, and discusses numerous topics, including technology updates.

b. Agencies need to obtain product information from single equipment, software or services vendors while performing pre-procurement market surveys and soliciting requests for information. Agencies should not limit their data gathering to individual vendors, however. They should also use alternate sources. Other sources include knowledgeable Federal and non-Federal experts, technology forecasters, user groups, and trade associations. These organizations offer seminars, expositions, and forums which are not designed to promote a specific product. A number of computer shows are also held in major U.S. cities each year that include courses on technology trends. Additional sources for technical information include trade journals, weekly and monthly periodicals, technical information and research publications, technical forecasts and business publications.

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11. Examples of acceptable vendor training. Following are examples of training opportunities which are acceptable for Government employees to attend.

a. An industry association announces an information technology conference featuring technology updates by top Government and industry officials. This conference is structured to afford a forum for the exchange of viewpoints and information between Government and industry, and features speakers from both industry and Government agencies. Attendance is open to all Government and industry employees.

b. A nationwide industry association sponsors a one day information technology seminar at which leading industry speakers will discuss varying topics. The seminar costs \$180, but is open for attendance to the general public, including all Government employees. Government purchase orders or training forms are acceptable for payment.

c. A leading trade publication which is oriented toward government readers sponsors a two day exposition and conference on "Use of CD-ROM in Government." Exhibits are free, but specific seminars require registration and a minimum fee.

d. A Program Manager, while preparing for an upcoming procurement, is required by FIRMR 201-20.203-1(a)(1) and FAR 11.004 to perform a market survey of the equipment which will meet the agency's functional requirements. To do so, he calls several FIP vendors and schedules a series of meetings at their offices, less than one day in length, during which the equipment and software will be demonstrated. Additionally, each company provides complete technical specifications on the equipment.

e. A FIP vendor has a new product which will soon be commercially available. A press release is issued about the product to all of the vendor's customers, including several Government agencies. Concurrently, the vendor works with one of its client agencies, which has a policy of allowing vendors to schedule "vendor days" in one of its conference rooms, to schedule a trade show or "vendor day" at the agency. The vendor sends out a general announcement throughout the agency advising of the date of the "vendor day." Additionally, agency executives are notified as to what time a two-hour executive briefing will be held. A contact name and telephone number is provided for the executives to confirm their attendance.

12. Examples of unacceptable vendor training. Following are examples of unacceptable "training" situations which are inappropriate for Government employees to attend, as well as a brief analysis of why the training is unacceptable. Note that these are only examples and do not cover every possible situation that is unacceptable. If Federal employees have questions regarding the acceptability of specific training or situations, they should seek advice and counsel from their supervisors. Supervisors may need to contact their agency ethics officials for additional guidance regarding applicable ethics rules and statutory authorities.

a. A major Federal Government vendor sponsors a one week "training seminar" for Government executives at its training facility in California. This training is "free," promotes the company's products and solutions, and is by invitation only. Travel expenses are to be paid by the attendee's agency, but meals and lodging are subsidized by the vendor. Attendance at this training is inappropriate because its length exceeds the one day limit for executive sessions, it is by invitation only, and the vendor subsidizes meals and lodging.

b. "Company T," which has current contracts providing FIP hardware and software to an agency, is requested by the agency to develop and hold a one week procurement seminar for agency Contracting Officer Technical Representatives. These seminars offer information on the latest Federal procurement regulations and general material on how to conduct a procurement. During the course, "real life" specifications and procurements will be used as examples. The training is inappropriate because the agency should not have requested the hardware/software company to develop the procurement seminar. An alternate, unbiased source should have been used.

c. "Company S," a leading software vendor sponsors a two day "Information Technology Seminar" and sends out invitations to the head of each agency which it does business with, and their respective IRM chiefs. At this free seminar, which includes lunches and refreshment, the company will discuss the role foreseen for its latest products to meet agencies' upcoming FIP needs. Attendance at this seminar is inappropriate because of the length of the seminar, attendance is by invitation only, and the vendor subsidized food and drinks.

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d. A vendor with several agency contracts hosts an evening "product demonstration" social to launch a new product. It invites all of the agency's IRM and procurement staff to attend, and presents the evening as an opportunity to learn how to use the new product. Free refreshments are provided, as well as a cash bar. Attendance at this "product demonstration" is inappropriate because it is held after work hours as a "social" event, attendance is by invitation only to a limited audience, and the vendor subsidized refreshments.

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